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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln No.: 10/042,983

Confirmation No. 7682

Filed: January 8, 2002

Applicants: Mary A. LAMP et al.

CERTIFICATE OF MAILING

Title: SOFT, FULLY BAKED
BREADSTICKS

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date.

Art Unit: 1761

Examiner: Lien T. Tran

5/21/2004

Date

Richard A. Kaba
Registration No. 30,562
Attorney for Applicant(s)

Attorney Docket No.: 72847

Customer No.: 22242

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICE ACTION**

Sir:

Pursuant to MPEP section 711.03(c) II, the Applicants respectfully petition to withdraw the Holding of Abandonment of the above-referenced application and to resend a Notice of Allowance as well as other relevant communications because a Notice of Allowance for this application was never received by the Applicants or the current Attorney of record.

The above referenced application was filed on January 8, 2002 by attorneys at the law firm of Fitch, Even, Tabin & Flannery [hereinafter "FETF"]. In response to an Office Action dated April 10, 2003, Applicants, through their attorneys at FETF,

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filed a "Response to Office Action" on September 9, 2003 requesting reconsideration of the application. On December 5, 2003, Applicant's Attorney, Richard Kaba (Reg. No. 30,562), held a telephonic interview with Examiner Lien T. Tran during which agreement was reached on allowable subject matter. After the telephonic interview, the next Office communication received from the United States Patent and Trademark Office was a Notice of Abandonment dated April 26, 2004 for failure to timely pay the issue fee.

Applicants respectfully submit that a Notice of Allowance or any other communications relative to the telephonic review or the Notice of Allowance were never received by FETF. Indeed, the next communication received by Applicants was the Notice of Abandonment dated April 26, 2004. In accordance with MPEP § 711.03(c) II, Applicants' undersigned attorney attests that a search of the application file, file jacket, and docket records was made and that a Notice of Allowance or any docketing notation in regards to a Notice of Allowance was not found.

Consequently, the absence of such docketing notation indicates that a Notice of Allowance was never received. In accordance with the docketing procedure at FETF, all Office communications and correspondence received from the U.S. Patent and Trademark Office are hand written on a docket which appears on the application file jacket (Attachment One) and entered into a computerized docket system (Attachment Two). As indicated by these two attachments, if a Notice of Allowance was received, an entry noting the Notice of Allowance would have been made sometime after the September 9, 2003 docketed response on the file jacket or an Issue Fee due date would have been posted in the List of Actions due on the computer docket printout.

Additionally, a prosecution calender is prepared for each upcoming month that provides a list of responsive actions due for each calendar day for every matter

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docketed by FETF. The Patent Application Information Retrieval database, which was accessed on May 11, 2004 (after receiving the Notice of Abandonment), indicates that the Notice of Allowance was mailed on December 10, 2003. Consequently, if the Notice of Allowance was received, the FETF prosecution calendar would also have indicated that an Issue Fee was due on March 10, 2004 (i.e. three months from the date on the Notice of Allowance) for this application under FETF docket number 72847. No such notice or indication regarding this case was found in a review of the relevant calendar.


As further support that the Notice of Allowance was not received, the Patent Application Information Retrieval system also indicated that a Request for Formal Drawings, an Examiner's Interview Summary (PTOL-413), and an Examiner's Amendment were also mailed on December 10, 2003. The search of the file jacket and docket records for this application further indicated that such other documents sent concurrently with the Notice of Allowance were also not received.

As a result, Applicants respectively request that the Holding of Abandonment be withdrawn and that a new Notice of Allowance be mailed.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

By


Richard A. Kaba
Registration No. 30,562

May 21, 2004

Suite 1600
120 South LaSalle Street
Chicago, Illinois 60603-3406
(312) 577-7000



Country Application

18-May-04

Client - Matter: 1410-72847 **Country:** US **SubCase:**
Client: KRAFT FOODS, INC. United States of America
Case Type: CIP **Application Status:** Pending
Application Number: 10/042,983 **Filing Date:** 08-Jan-2002
Patent Number: **Issue Date:**
Publication Number: **Publication Date:**
Priority Number: **Priority Date:**
Reel/Frame Number: 12783/109 **Expiration Date:**
Tax Schedule: LE **Tax Start Date:**
Agent:
Agent Reference Number:

List Of Actions

Action(s) Du	Due Date	Action Taken
Response Due	04-Apr-2002	Due Date 03-Apr-2002
Information Disclosure Stmtnt	08-Apr-2002	Due Date
2nd Extension	15-Jan-2003	Reminder 13-Jan-2003
2nd Extension	10-Sep-2003	Reminder 09-Sep-2003

Remarks: PRIORITIES: 60/134,570 FILED 5/17/99; 09/573,019 FILED 5/17/00

1/8/02 SENT TO PTO WITH GENERAL EXTENSION OF
TIME/PRELIMINARY AMENDMENT
1/30/02 RECEIVED RETURNED POST CARD
2/4/02 RECEIVED FILING RECEIPT
4/3/02 EXECUTED DECLARATION/ASSIGNMENT
5/10/02 RECEIVED UPDATED FILING RECEIPT
4/11/02 ASSIGNMENT RECORDED KRAFT FOODS HOLDINGS, INC.
REEL 012783 FRAME 0109
4/26/04 PTO NOTICE OF ABANDONMENT

User ID: pfjone
Date Created: 13-Feb-2002
Last Update: 18-May-2004